



Signed and Filed: October 31, 2012

A handwritten signature in dark ink, appearing to read "T. E. Carlson".

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Adv. Proc. No. 12-3113 TEC
)	
HENRY BUNSOW,)	
)	
Plaintiff,)	
)	
vs.)	
)	
STEVEN H. DAVIS, JEFFREY L.)	
KESSLER, JOEL I. SANDERS,)	
STEPHEN DICARMINE and JAMES R.)	
WOODS,)	
)	
Defendants.)	

MEMORANDUM RE MOTIONS TO TRANSFER VENUE AND TO REMAND OR ABSTAIN

On October 19, 2012, the court held a hearing on cross motions involving this removed state-court action. Plaintiff filed a motion to have the action remanded to state court. Defendants filed a motion to have this court retain jurisdiction and transfer venue to the Southern District of New York, where a related chapter 11 case is pending. Cecily A. Dumas and Ronald Jay Souza appeared for Plaintiff. Kathryn A. Coleman and Christopher Gartman appeared for Defendants Steven H. Davis, Joel I. Sanders, and Stephen DiCarmine. Adam A. Lewis appeared for Defendant Jeffrey L. Kessler. Upon due consideration, and for the reasons stated below,

MEMORANDUM RE MOTIONS TO TRANSFER
VENUE AND TO REMAND OR ABSTAIN

- 1 -

1 I determine that the motion for transfer of venue should be granted
2 and that it should be left to the "home" bankruptcy court in which
3 the related chapter 11 case is pending to decide whether the action
4 should be tried in state court or federal court.

5 FACTS

6 Plaintiff Henry Bunsow (Plaintiff) is a partner in Dewey &
7 LeBeouf LLP (Dewey), a law firm headquartered in New York City.
8 Dewey is currently the debtor in a chapter 11 case filed in the
9 Southern District of New York on May 28, 2012.

10 Defendants are partners and employees of Dewey.

11 Plaintiff filed an action in the San Francisco County Superior
12 Court alleging that Defendants induced him to join Dewey in early
13 2011 by misrepresenting the financial condition of the firm. He
14 claims that he suffered resulting damages in excess of \$7 million,
15 representing a now-lost capital contribution of \$1.8 million and
16 unpaid guaranteed compensation of \$5.25 million. Plaintiff has not
17 filed a claim against the Dewey law firm itself in the chapter 11
18 case.

19 Defendants removed the state-court action to this court,
20 alleging that this court has subject-matter jurisdiction because
21 the action is "related to" Dewey's chapter 11 case. This is so,
22 Defendants contend, because all of the Defendants have contractual
23 or statutory rights to be indemnified by Dewey for any amount they
24 are required to pay as a result of Plaintiff's action. Defendants
25 have timely filed proofs of claim in the Dewey bankruptcy case
26 asserting their right to be indemnified, but those claims cannot be
27 resolved until Plaintiff's action is resolved. Dewey has
28 directors' and officers' liability insurance, and its insurers have

1 accepted coverage without a reservation of rights, but claims
2 against Dewey exceed \$350 million, and it is uncertain at this time
3 whether the insurance coverage will be sufficient to cover all of
4 the costs of defense and liability that could be imposed upon
5 Defendants as a result of Plaintiff's action.

6 Defendants now seek to have this court transfer Plaintiff's
7 action to the Bankruptcy Court for the Southern District of New
8 York, where Dewey's chapter 11 case is pending. Plaintiff seeks to
9 have this court remand the action to the San Francisco Superior
10 Court.

11 DISCUSSION

12 1. Subject-Matter Jurisdiction

13 Section 1334(b) of the Judicial Code specifies that the
14 federal bankruptcy jurisdiction extends to "all civil proceedings
15 arising under title 11, or arising in or related to cases under
16 title 11." "Related-to" jurisdiction has been interpreted to
17 include any action that "could conceivably have any effect on the
18 estate being administered in bankruptcy." In re Fietz, 852 F.2d
19 455, 457 (9th Cir. 1988). Courts have held that there is related-
20 to jurisdiction over an action by one non-debtor against another
21 non-debtor where the defendant has a contractual or statutory right
22 to be indemnified by the bankruptcy estate for any loss suffered as
23 a result of the action. In re Global Crossing, Ltd., Sec. Litig.,
24 311 B.R. 345, 347 (S.D.N.Y. 2003); In re WorldCom, Inc. Sec.
25 Litig., 293 B.R. 308, 317-24 (S.D.N.Y. 2003).

26 I determine that the bankruptcy court has subject-matter
27 jurisdiction over this action under section 1334(b) and Fietz,
28 because each of the Defendants has a strong claim to be indemnified

1 by the debtor by contract or by statute. Plaintiff does not
2 contend otherwise.

3 2. Venue

4 Section 1409 of the Judicial Code governs venue for
5 bankruptcy-related proceedings. Section 1409(a) provides that a
6 proceeding may be commenced in the court in which the main
7 bankruptcy case is pending, subject to certain exceptions not
8 applicable here. Section 1412 of the Judicial Code authorizes this
9 court to transfer venue over this proceeding to another district
10 "in the interest of justice or for the convenience of the parties."
11 Because the Southern District of New York is a venue proper under
12 section 1409, and because the purpose of related-to jurisdiction is
13 to advance the effective administration of the main bankruptcy
14 case, I determine that if this proceeding is to remain in
15 bankruptcy court, the proper venue is the Southern District of New
16 York.

17 3. Remand or Abstention

18 Section 1452(b) of the Judicial Code provides that the court
19 to which a bankruptcy-related claim or action has been removed "may
20 remand such claim or cause of action on any equitable ground."
21 Section 1334(c) provides the bankruptcy court broad authority to
22 abstain in bankruptcy-related proceedings governed by state law:

23 (1) Except with respect to a case under chapter 15 of
24 title 11, nothing in this section prevents a district
25 court in the interest of justice, or in the interest of
26 comity with State courts or respect for State law, from
abstaining from hearing a particular proceeding arising
under title 11 or arising in or related to a case under
title 11.

27 (2) Upon timely motion of a party in a proceeding based
28 upon a State law claim or State law cause of action,
related to a case under title 11 but not arising under
title 11 or arising in a case under title 11, with
respect to which an action could not have been commenced

1 in a court of the United States absent jurisdiction under
2 this section, the district court shall abstain from
3 hearing such proceeding if an action is commenced, and
can be timely adjudicated, in a State forum of
appropriate jurisdiction.

4 Plaintiff argues that this court should remand this action to
5 the San Francisco Superior Court for the following reasons: (1)
6 Plaintiff's claims arise under state law; (2) Plaintiff's claims
7 are non-core proceedings; (3) Plaintiff's claims cannot be tried in
8 the bankruptcy court because Plaintiff has properly demanded a jury
9 trial and does not consent to have that trial conducted in the
10 bankruptcy court; and (4) Plaintiff's claims are subject to
11 mandatory abstention because they can be timely tried in state
12 court and because their timely resolution is not essential to the
13 efficient administration of the Dewey chapter 11 case.

14 Defendants argue that neither abstention nor remand to the San
15 Francisco Superior Court is appropriate for the following reasons:
16 (1) trial in any California court is improper, because the Dewey
17 partnership agreement provides that any action involving that
18 agreement is to be tried in New York; (2) Plaintiff's action is a
19 core proceeding that can be tried in a bankruptcy court; (3)
20 Plaintiff's action will be resolved more quickly in the New York
21 bankruptcy court than in the San Francisco Superior Court; and (4)
22 prompt resolution of Plaintiff's action is necessary to the
23 efficient administration of the Dewey bankruptcy case, because it
24 is a step necessary for the resolution and payment of Defendants'
25 indemnity claims against Dewey.

26 I determine that Plaintiff's arguments for remand are not
27 necessarily persuasive and that the decision whether to abstain or
28 remand should be decided by the Bankruptcy Court for the Southern

1 District of New York.¹ First, I find that it is not likely that
2 the action will be tried promptly in the San Francisco Superior
3 Court. Plaintiff's evidence on that point does not take sufficient
4 account of the effects of the budget crisis currently hampering the
5 operations of the California courts. Second, that the bankruptcy
6 court cannot conduct a jury trial is not controlling. The New York
7 bankruptcy court could find other ways to resolve the action
8 promptly.² That court could adopt an aggressive alternative
9 dispute resolution scheme. The bankruptcy court could resolve the
10 action by motion. Sigma Micro Corp. v. Healthcentral.com (In re
11 Healthcentral.com), 504 F.3d 775, 786-87 (9th Cir. 2007). The
12 action could also be tried in the district court. The District
13 Court for the Southern District of New York has exercised
14 jurisdiction over actions related to other large chapter 11 cases.
15 Global Crossing, Ltd. Sec. Litig., 311 B.R. at 346-50; WorldCom,
16 Inc. Sec. Litig., 293 B.R. at 334. Third, the bankruptcy court
17 presiding over the Dewey chapter 11 case understands much better
18 than this court the extent to which it is important to the
19 effective administration of that case that Defendants' indemnity
20 claims be resolved promptly.

21

22

23

24 ¹ This court need not decide whether the choice-of-venue
25 provision in the Partnership Agreement bars remand to the San
26 Francisco Superior Court, because I determine that the New York
27 bankruptcy court should determine whether it should abstain or
remand in favor of any state court. If the New York bankruptcy
court determines that remand or abstention is appropriate, it can
make whatever determinations are necessary regarding the choice-of-
venue provision.

28

² This court assumes without deciding that Plaintiff's action
is a non-core proceeding.

1 CONCLUSION

2 Defendants' motion for transfer of venue is granted.
3 Plaintiff's motion for abstention or remand should be decided by
4 the New York bankruptcy court.

5 **END OF MEMORANDUM**

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